

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

RAYMOND S. LUPSE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2532

Decision No. CU 5755

Counsel for claimant:

Joseph S. Donchess, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by RAYMOND S. LUPSE in the amount of \$15,000 based on an interest in a Cuban corporation. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949, as amended [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant describes his loss as \$14,800 represented by a promissory note of Fomento Residencial de Cuba, and \$200 in stock of said company. Further he states that in 1963 the Internal Revenue Service allowed a loss of \$15,000.

#### STOCK INTEREST

Since Fomento Residencial de Cuba, S.A. (hereinafter referred to as Fomento) was organized under the laws of Cuba, it does not qualify as a "national of the United States" within the meaning of Section 502(1)(B) of the Act, which defines a national of the United States as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) The record includes a copy of Certificate No. 50, issued to claimant on July 6, 1956, for 40 shares of Fomento. Additionally, there is of record a copy of the original receipt by Fomento for \$15,000 received from claimant in 1956.

The Commission finds that claimant was the owner of 40 shares of Fomento.

Fomento was formed for the purpose of purchasing a tract of real estate to be known as "Reparto Belle Monte", located at Playa Guanabo in the Municipality of Guanabacoa. The land was purchased and there began the development of it by putting in roads, electricity, water and other utilities. The corporation sold land on a land contract basis and all monies received from June, 1955 through December 31, 1959 were reinvested for the further development of the land for the operating expenses of the corporation. In his affidavit of April 14, 1961 (in a related State Department file) claimant stated that during the period June 1955 through December 31, 1959, \$976,732.28 worth of land had been sold on land contract.

On December 24, 1959, the Government of Cuba published in its Official Gazette, Extraordinary Edition, its Law 691 (which had been approved on December 23, 1959). This Law was concerned with the price and sale of empty lots. Briefly, Chapter I described that property which could be termed an empty lot, including those with buildings under some circumstances; Chapters II and III provided a maximum price per square meter in new and existing areas and further provided that a lot could not be sold until completion of all projected works of urbanization, approved by FHA (Fomento de Hipotecas Aseguradas); Chapter IV provided for the reappraisal of empty lots sold on installment plans diminishing the price by 30%; Chapter V provided for the forced sale of empty lots by application to the appropriate authority; and Chapter VI concerned taxes.

A letter written on February 4, 1961 by a Cuban attorney and corporation officer to claimant's counsel informed him that as of that time the corporation had not been nationalized, nor had its properties been confiscated or intervened by the Government of Cuba; that the corporation in general was not prevented from operating, but since the development of the whole area had not been completed, Law 691 precluded new sales, and further provided that the holders of purchase contracts on the date of the Law,

buying under installment plans, received a 30% discount from the original price and moreover, were not obliged to continue paying until development was completed. The letter also indicates that as of that time only about one-third or one-half at the most, of the total area of Belle Monte had been developed.

In a subsequent letter of January 24, 1964, the attorney informed that on the preceding day the company had been taken over by the Government, following an inquiry as to the whereabouts of the stockholders, and a bank account of \$4,710 was taken along with \$68.73 petty cash and the month's collections of \$110.

On December 6, 1961, the Government of Cuba published its Law 989 which provided for confiscation of all rights and properties of those who left Cuba. It appears that the stockholders of Fomento, including the claimant, may have been Americans and had left Cuba.

The Commission finds that Fomento was nationalized or otherwise taken by the Government of Cuba pursuant to Law 989 and that this taking occurred on January 23, 1963. (See Claim of Wallace Tabor, Claim No. CU-0109)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes balance sheets for 1956, 1957, 1958, 1959 and 1960, as well as letters concerning the progress of the development. There is also to be considered the effect in this case of Law 691, if any. In this connection, it is noted that in the above-mentioned letter of February 4, 1961, it was stated that some lots had been sold in the undeveloped area, and they (the corporation officers) had been unable to transfer the purchases to the developed area, so that they might have divided the project, in order to have the proper authority approve the developed area, separating it from the rest of the area which was not developed.

The balance sheet for December 31, 1960 shows assets of \$828,239.22, capital stock of \$5,000.00, a net loss for the year of \$25,263.68, and accumulated losses as of January 1, 1960, adjusted, of \$91,580.26, or a total accumulated net loss of \$111,843.94. The value of the land was carried as \$96,976.74; the installment contract receivables as \$262,138.76. This latter figure resulted from a balance at the first of the year of \$292,280.84, new 1960 contracts of \$1,599.50, less collections and cancellations of \$31,741.58.

The December 31, 1959 balance sheet shows assets of \$866,163.08; a net loss for the year of \$45,645.14, and a total accumulated net loss of \$85,254.21. The installment accounts receivable, as stated above, were \$292,280.84. The comparable figure for December 31, 1958 was \$612,107.22. This indicates that collections must have been made during 1959, but new contracts for 1959 appear to have been \$1,304.64.

The December 31, 1958 balance sheet reflects assets of \$1,208,092.17; a net profit for that year of \$2,343.70 and accumulated losses of \$39,609.07. It appears that for eleven months ending November 30, 1958, the sales were \$289,871.74.

The balance sheet for December 31, 1957 shows assets of \$1,032,768.25; a net profit of \$914.34 for that year; and accumulated adjusted losses of \$41,952.77. The installment accounts receivable are shown as \$418,251.72, and the sales for 1957 appear to have been \$231,958.64.

It is apparent that sales in 1957 and 1958 were measurable and the corporation showed a profit, however slight, for beginning years. But in 1959 sales clearly were down, resulting in a large loss to the corporation, which situation, of course, continued into 1960.

The record also includes a balance sheet for December 31, 1956 which shows a loss. This, however, was the year of commencement. In this connection, also, the record includes a letter of the Cuban attorney, of June 13, 1957 which, in paraphrase, states the following:

Undoubtedly the corporation continues to spent its entire income without providing an accumulation to amortize its note and mortgage indebtedness, but that this is natural and was to be expected; apart from having paid \$25,000 in old debts, the corporation is developing a large tract of land which requires a big investment, independently of the fact that sales have slowed down, which is the case in every other development in Cuba (at that time); as the purchase price installments had to be paid, such difficulties were to be expected, unless sales had been extremely heavy; developments of this nature should produce a very large profit in the course of a few years and, consequently, as in any business where large profits are to be obtained, the hazards must be greater; the location justifies a promising future; there are indications that the town of Guanabo will be benefited through Belle Monte; when the venture began, the lands were mortgaged in favor of the original owners, but with all the improvements, they are much more valuable than they were at the beginning.

The Commission finds that the repressive effect of Law 691, and the interdiction embodied therein, clearly resulted in an artificial devaluation of the net worth of Fomento. Considering the trend shown by the available company records, and information available to the Commission as to values of similar developments, the Commission concludes that claimant suffered a loss of \$200 with respect to his 40 shares of Fomento within the meaning of Title V of the Act as a result of the taking of the corporation by the Government of Cuba on January 23, 1963.

#### PROMISSORY NOTE

The record includes the promissory note given by Fomento to claimant on July 17, 1956, in the amount of \$14,800 with interest of four per cent annually until the day of definite payment.

The Commission holds that claimant is entitled to recover for this debt of a nationalized enterprise. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

The value of claimant's loss arising from the note is as follows:

\$14,800.00	Principal
1,875.46	Interest due as of December 31, 1960
592.00	Interest for 1961
592.00	Interest for 1962
<u>37.30</u>	Interest to January 23, 1963
\$17,896.76	

Accordingly, the Commission finds that claimant suffered a loss of \$17,896.76, within the scope of Title V of the Act, arising from the debt of the nationalized Fomento.

Claimant's losses are summarized as follows:

Stock Interest	\$ 200.00
Promissory Note	<u>17,896.76</u>
	<u>\$18,096.76</u>

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof. (See Claim of Eileen M. Smith, Claim No. CU-3038.)


The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.


CERTIFICATION OF LOSS

The Commission certifies that RAYMOND S. LUPSE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighteen Thousand Ninety-six Dollars and Seventy-six Cents (\$18,096.76) with interest thereon at 6% per annum from January 23, 1963 to the date of settlement.

Dated at Washington, D. C.  
and entered as the Proposed  
Decision of the Commission

9 SEP 1970

  
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Lyle S. Garlock, Chairman

  
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Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)